REMARKS

Applicant respectfully requests that the instant application be reconsidered in light of the above amendments and the following remarks.

Claims 1-5, 8-11, and 16 have been amended.

Claims 6 and 17 have been cancelled.

Claims 13-15, and 19 have been withdrawn.

No new claims have been added.

Restriction Under 35 U.S.C. § 121

Applicant confirms the provisional election of Claims 1-12 and 16-18 with traverse for prosecution in the instant application. Claims 13-15 and 19 are withdrawn from further consideration. Applicants reserve the right to file divisional applications, and to pursue further prosecution of the withdrawn claims.

In the Specification

Consistent with the Examiner's suggestion, the specification has been amended on Page 42 to insert a trademark indication (i.e., GORE-TEX™.)

In the Abstract

The abstract of the invention has been objected to in the first line wherein an acetanaphthalene diimine complex is disclosed. The Abstract has been amended to correct this obvious typographical error. Accordingly, the Abstract now recites an acenaphthalene diimine complex.

Claim Rejections Under 35 USC §112, first paragraph

Claims 1-5, 8-12, and 16 have been rejected under 35 USC §112, first paragraph for not reasonably providing enablement for the transition metal being an earlier transition metal. Examiner has relied on catalysis being an unpredictable art in making the suggestion that since the chemical behavior of early transition metals is different than the chemical behavior of late transition metals; the Applicants' single example using a

late transition metal cannot place the invention into the hands of the public absent extensive experimentation. However, Examiner has not offered support for this assertion. It is well established that an assertion by the PTO that the enabling disclosure is not commensurate in scope with the protection sought must be supported by evidence or reasoning substantiating those doubts. *See, In re Dinh-Nguyen*, 492 F.2d 856,858, 181 U.S.P.Q.47, 49 (C.C.P.A. 1974).

However, in the interest of furthering prosecution of the instant application, Applicants have amended Claims 1, 2, and 16 to recite a group 9-11 transition metal. These amendments render Claims 6 and 17 redundant. Accordingly, Claims 6 and 17 have been cancelled. Removal of the rejection is respectfully requested.

Claims 1 and 6-12 have been rejected under 35 USC 112, first paragraph because the specification, while being enabling for pnictogen Pn being nitrogen, does not reasonably provide enablement for this atom being any other pnictogen.

Applicants have amended Claim 1 to further clarify Pn represents nitrogen. Removal of the rejection is respectfully requested.

Claim Rejections Under 35 USC §112, second paragraph

Claims 1-12 and 16-18 have been rejected under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In particular, Examiner has objected to the recitation in Claim 1, part (a), "functions to make the catalyst precursor polymerizable". Applicants have amended Claim 1 to recite "is capable of polymerization." Support for this amendment may be found on Page 6, line 11 of the application as filed.

As suggested by Examiner, the term "catalyst polymerization monomer" in Claim 1 has also been amended to recite "olefin monomer." The redundant phrase in Claim 2 has been deleted, and clause (c) has been amended to exclude nickel.

Claims 3-5 have been amended using proper subscripts and superscripts. Claims 3-5 have also been amended to recite proper Markush language.

Claim 6 has been cancelled rendering the rejection to this claim moot.

Claim 8 has been amended consistent with Examiner's suggestion.

Claims 9, 10 and 11 have been amended to depend from Claim 1.

Claim 16 has been amended consistent with Examiners suggestion.

Accordingly, the claims have been amended to correct obvious typographical errors and to further clarify Applicants' presently claimed invention. Removal of the rejections is respectfully requested.

Claim Rejections Under 35 USC §103

Claims 1-12 and 16-18 have been rejected under §103 as being unpatentable over each of Chinese Patent 1352203 A (Jin I) and Chinese Patent 1371924 A (Jin II.)

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988.) Establishing a prima facie case of obviousness requires that all elements of the invention be disclosed in the prior art. *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970.)

However, Applicants assert that both Jin I and Jin II are not proper references in the instant application. According to MPEP § 715.01(c) unless a reference is a statutory bar, a rejection based on a publication may be overcome by a showing that it was published either by applicant himself or on his behalf. The applicant may overcome the rejection by filing a specific affidavit or declaration under 37 CFR 1.132 establishing that the article is describing applicant's own work. An uncontradicted "unequivocal statement" from the applicant regarding the subject matter disclosed in an article, patent, or published application will be accepted as establishing inventorship (In re DeBaun, 687, F.2d 459, 463, 214 USPQ 933, 936 (CCPA 1982).

Chinese Patent CN 1352203A (Jin I) was published June 5, 2002. Chinese Patent CN 1371924A (Jin II) was published October 2, 2002. The instant application was filed October 24, 2004, and claims priority from USSN 60/446,607 filed February 11, 2003. Jin I was published less than 12 months (8 months 6 days) prior to Applicants present application. Jin II was published after Jin I. Accordingly, neither Jin I nor Jin II act as a statutory bar under 35 USC § 102(b) against the present application.

Jin I and Jin II both list Guo-xin Jin and Dao Zhang as inventors. Guo-xin Jin and Dao Zhang are also listed as inventors on the present application. Accordingly, the

present application has a common inventor with Jin I and Jin II. Applicants submit herewith an affidavit under 37 CFR 1.132 (copy attached) establishing that Jin I and Jin II describes Applicants' own work.

The affidavit contains an unequivocal statement from Guo-xin Jin and Dao Zhang that each conceived or invented the subject matter disclosed in the instant application, and in the referenced patents. References Jin I and Jin II are not properly considered to be prior art, and should be removed as references during prosecution of Applicants' presently claimed invention.

Accordingly, Applicants respectfully request the rejection of the claims be removed, and the claims, as amended, be passed to allowance. Reconsideration and allowance is thus respectfully requested.

Respectfully submitted,

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